Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

MAYO COLLABORATIVE SERVICES, INC.,
Petitioner,

v.

COMMISSIONER OF REVENUE,
Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Minnesota

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court has repeatedly held that the dormant Commerce Clause prohibits a State from taxing a transaction more heavily when it crosses state lines than when it occurs entirely within a State. The MinnesotaCare tax is assessed upon revenues that a Minnesota medical laboratory generates from out-of-state sales but does not apply to revenues it receives from in-state sales. In contravention of this Court's precedents, and in conflict with the decisions of several state supreme courts, the Supreme Court of Minnesota held that the MinnesotaCare tax does not facially discriminate against interstate commerce. The question presented is whether a state tax that applies only to revenues received from out-of-state transactions violates the dormant Commerce Clause.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The caption contains the names of all the parties to the proceeding in the court below.

Pursuant to this Court's Rule 29.6, undersigned counsel state that Mayo Collaborative Services, Inc., is a wholly-owned subsidiary of Mayo Foundation, which is not publicly traded. No publicly held company owns 10% or more of the stock of Mayo Collaborative Services, Inc.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Mayo Collaborative Services, Inc. ("Mayo") respectfully submits this petition for a writ of certiorari to review the judgment of the Supreme Court of Minnesota.

OPINIONS BELOW

The original opinion of the Supreme Court of Minnesota is unreported. The order denying Mayo's petition for rehearing and amending the opinion is unreported. App., *infra*, at 52a. The amended opinion of the Supreme Court of Minnesota is reported at 698 N.W.2d 408 (2005). *Id.* at 1a. The opinion of the Minnesota Tax Court is unpublished but is electronically reported at 2004 WL 2199503. *Id.* at 31a.

JURISDICTION

The original opinion of the Minnesota Supreme Court was filed on June 30, 2005. App., *infra*, at 1a. The court amended its opinion and denied Mayo's timely petition for rehearing on July 29, 2005. *Id.* at 52a. On October 17, 2005, Justice Thomas extended the time within which to file a petition for certiorari to and including November 26, 2005. No. 05A330. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Commerce Clause of the United States Constitution, U.S. Const. art. I, § 8, cl. 3, provides, "The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

The pertinent provisions of the MinnesotaCare tax are set forth in the Appendix, *infra*, at 54a.

STATEMENT

1. Mayo is a medical reference laboratory located in Rochester, Minnesota that performs testing on medical samples submitted by hospitals, surgical centers, health-care providers, and individual patients. App., *infra*, at 2a. Affiliated with the world-renowned Mayo Clinic, Mayo transacts business in Minnesota and many other States, as individual patients, hospitals, and other health-care institutions from around the country seek Mayo's expertise and state-of-the-art services. *Id.* at 3a. Although Mayo performs some testing directly for patients, *id.* at 6a, the vast majority of its revenue is derived from sales to health-care institutions that subsequently resell Mayo's services to their patients.[1]

In 1992, Minnesota enacted a new and sweeping tax on the health-care industry. Dubbed the "MinnesotaCare" tax, the legislation imposes a tax on the gross revenues of "health-care providers," "hospitals," and "surgical centers." Minn. Stat. §§ 295.50-.59. Mayo is classified as a health-care provider under Minnesota law, *id.* § 295.50 subd. 4, and is therefore subject to the MinnesotaCare tax, which between 1998 and 2001 (the years here in question) was assessed at the rate of 1.5% of its gross revenues. *Id.* § 295.52 subd. 7.[2]

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[1] A common scenario under which "reselling" occurs is where a health-care institution takes a blood sample from a patient and sends the sample to Mayo for testing. Mayo performs the test and charges the health-care institution for its service. The health-care institution pays Mayo and then "resells" the testing service to the patient for an amount that covers Mayo's fee and that also generates a profit for the institution.

[2] The MinnesotaCare tax immediately encountered constitutional difficulties. In *Baertsch v. Minnesota Department of Revenue*, No. C7-93-2680 (Minn. Dist. Ct. Sept. 15, 1994), a Minnesota state court invalidated on dormant Commerce Clause grounds a provision of the legislation that taxed out-of-state health-care institutions on the revenues they generated from Minnesota customers. Minn. Stat. § 295.51 subd. 1. The court concluded that these out-of-state taxpayers lacked a "substantial nexus" with Minnesota and therefore could not validly be subject to taxation by Min-

In the provision challenged in this case, the MinnesotaCare tax categorically exempts revenues that a Minnesota health-care provider generates from sales to customers who themselves pay the MinnesotaCare tax. *See* Minn. Stat. § 295.53 subd. 1(a)(3)-(4) (exempting "payments received" from hospitals, surgical centers, and health-care providers "for goods and services on which liability for [the MinnesotaCare] tax is imposed").[3] Because Mayo's out-of-state customers can never be subject to the MinnesotaCare tax, this exemption never applies when Mayo sells its services out of state. Nor does the MinnesotaCare tax provide an exemption for revenues received from customers who pay a gross receipts tax similar to the MinnesotaCare tax to another State. Therefore, Mayo must always pay the MinnesotaCare tax when it sells services to out-of-state customers, but it is categorically exempt from the tax when doing in-state business with Minnesota hospitals, surgical centers, and health-care providers.[4]

2. In its annual tax returns for the calendar years 1998 through 2001, Mayo excluded from the MinnesotaCare tax

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[Footnote continued from previous page]

nesota. *Baertsch* (slip op. at 14-19). In response, the Minnesota legislature limited the reach of the tax to Minnesota health-care institutions, but it did not disturb the discriminatory exemption provisions at issue in this case.

[3] The term "customers" is used in this petition to refer to hospitals, surgical centers, and health-care providers and does not include patients who purchase services directly from Mayo. Mayo does do business directly with patients, but the tax exemption does not apply to revenues that Mayo receives directly from Minnesota patients.

[4] In the decision below, the Supreme Court of Minnesota cited to the 2000 edition of the Minnesota Statutes, where the exemption provision appeared at Minn. Stat. § 295.53 subd. 1(a)(4)-(5). The exemption provision has since been renumbered as Minn. Stat. § 295.53 subd. 1(a)(3)-(4). All references in this petition are to the 2005 edition of the Minnesota Statutes.

assessment the gross revenues it received from *both* Minnesota and out-of-state customers. App., *infra*, at 3a. The Minnesota Tax Commissioner approved the exclusion of revenues from Minnesota customers but disallowed the exclusion of revenues generated from out-of-state sales. *Id.* The Commissioner then assessed additional taxes of $4,450,502, as well as $860,977 in interest, which represented the MinnesotaCare tax liability due on Mayo's revenues from sales to out-of-state customers. *Id.*

Mayo appealed the Commissioner's ruling to the Minnesota Tax Court, contending that the MinnesotaCare tax facially discriminates against interstate commerce and is thus *per se* invalid under the dormant Commerce Clause. The tax court concluded that the statute does not facially discriminate against interstate commerce because it does not contain an "express" geographic distinction between Minnesota and non-Minnesota customers. App., *infra*, at 48a. The tax court declined to consider the tax's practical operation. *Id.*

Mayo also contended that the MinnesotaCare tax is internally inconsistent in violation of the "fair apportionment" requirement set forth in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977).[5] Mayo demonstrated that if every State enacted a tax identical to the MinnesotaCare tax, interstate transactions would be taxed more heavily than intrastate sales. The tax court disagreed and concluded that the Minne-

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[5] To comply with the dormant Commerce Clause, a state tax must (1) be applied to an activity with a substantial nexus to the taxing State, (2) be fairly apportioned, (3) not discriminate against interstate commerce, and (4) fairly relate to the services provided by the State. *Complete Auto Transit, Inc.*, 430 U.S. at 279. A tax is "fairly apportioned" where it is both internally and externally consistent. "Internal consistency is preserved when the imposition of a tax identical to the one in question by every other State would add no burden to interstate commerce that intrastate commerce would not also bear." *Okla. Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 185 (1995).

sotaCare tax is fairly apportioned because, even if interstate commerce would be burdened by other States' enactment of similar tax schemes, health-care providers such as Mayo would be taxed only once per transaction. App., *infra*, at 47a. In the tax court's view, this feature saved the MinnesotaCare tax from internal inconsistency. *Id.*

3. Mayo filed a petition for a writ of certiorari with the Minnesota Supreme Court, which affirmed the tax court's decision. App., *infra*, at 30a. Although it acknowledged that this Court's holdings in *Armco Inc. v. Hardesty*, 467 U.S. 638 (1984), and *Tyler Pipe Industries, Inc. v. Washington State Department of Revenue*, 483 U.S. 232 (1987), "might be read to suggest that a tax exemption such as Minnesota's is facially discriminatory if applied to in-state sales but denied to out-of-state sales," App., *infra*, at 12a, the Minnesota Supreme Court expressly declined to follow those decisions because in *Oklahoma Tax Commission v. Jefferson Lines, Inc.*, 514 U.S. 175—which was decided after *Armco* and *Tyler Pipe*—this Court had expressly left open the question whether a State violates the dormant Commerce Clause by providing a tax credit for the payment of an in-state tax by a third party but failing to extend that credit to the payment of equivalent out-of-state taxes. *See id.* at 192 n.6 ("We express no opinion on the need for equal treatment when a credit is allowed for payment of in- or out-of-state taxes by a third party.").

Instead, the Minnesota Supreme Court elected to rely upon this Court's decisions in *Kidd v. Alabama*, 188 U.S. 730 (1903), and *Darnell v. Indiana*, 226 U.S. 390 (1912)—two cases that this Court later declared "are no longer good law under the Commerce Clause." *Fulton Corp. v. Faulkner*, 516 U.S. 325, 346 (1996). The Minnesota Supreme Court interpreted *Kidd* and *Darnell* as "suggest[ing] that the Interstate Commerce Clause does *not* require equal treatment when [a tax] exemption is allowed for payment by *a third party* of a separate in-state tax but not of a separate out-of-